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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/916,053	07/26/2001	William John Waywood	A1019/20276	7279

7590 10/28/2003  
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EXAMINER

ZIRKER, DANIEL R

ART UNIT PAPER NUMBER

1771

DATE MAILED: 10/28/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

Applicant(s)

Examiner

Group Art Unit

— The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address —

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- ☒ Responsive to communication(s) filed on 8/18/03
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 1 1; 453 O.G. 213.

### Disposition of Claims

- ☒ Claim(s) 1, 3-6, 8-28, 30-33, 35-50 is/are pending in the application.
- Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 1, 3-6, 8-28, 30-33, 35-50 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement

### Application Papers

- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).
- ☐ All ☐ Some\* ☐ None of the:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))

\*Certified copies not received: \_\_\_\_\_

### Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other \_\_\_\_\_

Office Action Summary

Art Unit 1771

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

2. Claims 1, 3-6, 8-28, 30-33 and 35-50 are rejected under 35 U.S.C. § 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. More particularly, as was previously set forth in paragraph No. 2 of Paper No. 6 applicant's amendments to the specification in the paragraph which began on page 3, line 7 are new matter. Applicant argues (Response, page 10, second paragraph) that the amendment presented to the specification "was simply an amendment to correct the scope of the prior art", but by doing so he also changed the scope of his earlier admission, which the Examiner had relied upon, in combination with the secondary reference, to reject the claims under 35 U.S.C. § 103. The Examiner again repeats his position that it is a well known fact that a specification cannot be amended to incorporate new matter during prosecution or afterwards even in many situations when the material which is deleted may well be factually incorrect, and the material added is also a correct statement of the facts, as applicant has previously strongly urged. The Examiner's position is again repeated that the original paragraph beginning at page 3

line 7 contains new matter in its recitation of applicant's statement of the prior art, which the Examiner has relied upon as an admission to reject the claims, and it is hereby repeated.

With respect to applicant's reliance upon Ex parte Anderson, et al. the Examiner notes that the factual situation in that case was much different than that of the present application. In that application it appears that there was a clearly discernible factual error in the technical disclosure, while in the present application applicant has made a far from obvious incorrect statement of the state of the prior art of which he was aware, which is believed more than sufficient to distinguish the two cases.

3. The previously relied upon prior art rejection based upon applicant's original admissions concerning the prior art as set forth beginning at original page 3 line 7 taken in view of Frognet et al. has been withdrawn since the scope of the admission is, upon reconsideration, no longer sufficient to support the combination admission-prior art rejection. However, should the new matter rejection set forth in paragraph No. 2 of Paper No. 6 be withdrawn the scope of the resulting admission would again be sufficient to reject the claims in view of Frognet et al.

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel

Serial No. 09/916,053

-4-

Art Unit 1771

Zirker whose telephone number is (703) 308-0031. The examiner can normally be reached on Monday-Thursday from 8:30 A.M. to 6:00 P.M. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris, can be reached on (703) 308-2414. The fax phone number for this Group is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0661.

Dzirker:cdc

October 22, 2003

DANIEL ZIRKER  
PRIMARY EXAMINER  
GROUP 4300  
1700

*Daniel Zirker*